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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

GEORGE E. MORTON, TRUSTEE, AND CITY NATIONAL BANK, A BANKING CORPORATION, AS TRUSTEE, AND INDIVIDUALLY ..... *Petitioners,*

v. No. .....

DARDANELLE SPECIAL SCHOOL DISTRICT NO. 15 OF YELL COUNTY, ARKANSAS ..... *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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July 25, 1941

[illegible] v. S. L. [illegible], Little Rock

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

A. PETITION FOR WRIT OF CERTIORARI

To the Honorable Harlan F. Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Petitioners, George E. Morton, Trustee, and the City National Bank, Trustee, and individually, respectfully show:

I

SUMMARY STATEMENT OF THE MATTER INVOLVED

The petitioners were plaintiff and intervener, and the respondent was defendant below. This case originated in the District Court for the Eastern District of Arkansas. It involves two issues of bonds aggregating $160,000 of the

Dardanelle Special School District, of Dardanelle, Arkansas; one issue of $55,000 dated March 1, 1926, and an additional issue of $105,000 dated January 1, 1931. The validity of the bonds is not involved. The District Court in decrees entered in January, 1936, and June, 1938 (R. 50 and 70), declared the respective issues valid and rendered judgment against the District therefor with interest from which there was no appeal. The court retained jurisdiction to grant further relief. Thus, their validity is settled beyond question.

The original bill was filed January 9, 1935, by Morton, as Trustee of the first issue of bonds. At that time the district had paid no bonds or interest for three years (R. 2). The City National Bank, as owner and as Trustee for the owners of the second issue of bonds, filed an intervention on May 29, 1935. Certain taxpayers in the appellee District contested the validity of the second issue, which litigation was protracted for several years. Finally, the court held the bonds were valid and entered a decree giving judgment for the full amount of the bonds and interest on June 28, 1938, from which there was no appeal (R. 70). In this last decree, the court retained jurisdiction to grant further relief.

In the original bill, it was alleged and never denied that the District had pledged all income and revenues from all sources to pay said bonds and interest as they should mature. At the time the bonds were issued, there was no law in the State requiring that bonds issued by a Special School District should have the approval of the voters of the District, or that they should vote a special tax to pay bonds. The affairs of such districts were in the hands of a Board of Directors to manage just as the directors of any other business corporation would. Under the laws in

force when the bonds were issued, the taxpayers of the District voted whatever millage tax they saw fit, not to exceed a certain limit. The expenditure of such taxes so voted was in the hands of the directors. In 1931, *after* these bonds were issued, the Legislature passed Act No. 169 of 1931. Sections 65 and 66 of said Act contained provisions that at school elections, the directors might submit the question of the creation of a building fund to the electors of the District. The ballot was to contain provisions for voting for or against a building fund or for voting a certain number of mills for a building fund with the provision that any such tax voted for one purpose, should not be used for another purpose. There was no such law in existence at the time these bonds were issued.

For many years, the electors of the respondent District voted the limit of eighteen mills school taxes for general school purposes, without allocating any portion of such taxes to any particular purpose. Prior to Act 169 of 1931 there was no power given the electors of a district to allocate any portion of the tax voted to any particular purpose. The original bill contained allegations that the deed of trust executed in connection with the bonds pledged all the revenues and income of the District, from whatever source derived, to the payment of said bonds; that the District had covenanted and agreed to create a building fund and place therein calculated sums each year ample to retire said bonds and interest as they should mature. The District ceased payment of said obligations three years prior to the institution of this suit. The directors claimed that the electors of said District had not voted any mills as a building tax to pay said bonds and that to pay same out of funds voted for a General Tax, would be a diversion of said

funds. The plaintiff alleged in his bill (R. 4) that this was a device being used by the District to defeat payment of its just obligations and if permitted would result in complete repudiation contrary to Section 10, Art. 1 of the Constitution of the United States, and prayed for injunctive and other relief.

At the time the bill was filed, the late Hon. John E. Martineau was presiding as District Judge for the Eastern District of Arkansas. He ordered one-half of the tax revenues of the District be set aside for payment upon its bonds and also provided in the order that the District should be given an opportunity to refund its outstanding debts. He died before the litigation involving the validity of the second issue of bonds was disposed of. After this question was disposed of by his successor, an opportunity was again extended the District to refund its outstanding bonds. No bonds having been paid for nine years petitioners sought additional relief to prevent the District from diverting its revenues, which had been pledged to pay said bonds. The court denied this relief. The court amended the previous order by giving the District all of the 18 mills, holding the petitioners were not entitled to any of it, but did allow out of other taxes an equivalent of six mills to be paid towards its bonded debt. Nine mills would never have liquidated the debt, and the reduction to six mills does not produce a sufficient sum annually to keep the interest current or pay anything on bonds as they mature. The court made findings of fact and announced conclusions of law requested by respondents (R. 163), sustaining its contentions specified in its counter claims as follows:

"For its counterclaim defendant states that on June 28, 1938, an order was entered by this court directing the directors of the district to set aside nine mills with which to pay the bondholders interest and principal due them on bonds; that under the law of the State of Arkansas as it has been interpreted by this Court and the Supreme Court of Arkansas, the directors are without legal authority to pledge any certain amount of revenues to the bondholders, nor has any particular amount of millage been voted to the bondholders by the electors of the defendant district; and that defendant district needs the said revenues for the operation and maintenance of its schools" (R. 83).

The appeal to the Circuit Court of Appeals was from the final decree of June 17, 1940 (R. 164).

The case was argued in the Circuit Court of Appeals on December 17, 1940. On June 30, 1941, that court affirmed the judgment of the District Court (R. 177-183). Petitioners in due time applied to the Circuit Court of Appeals for a stay of the issuance of the mandate (R. 183).

The petitioners seek a review of said cause in this Court upon the ground that the Acts of 1931 and 1933 as construed by the court impair the obligations of the bond contract in violation of their rights under Section 10 of Article I of the Constitution of the United States, and also upon the ground that the taking of the entire millage tax for the maintenance of the schools deprives them of their rights and property in violation of said rights under Section 1 of the 14th Amendment to the Constitution of the United States.

II

STATEMENT OF JURISDICTION

Petitioner, George E. Morton, the original plaintiff, is a citizen and resident of the State of Illinois (R. 1; 72). Respondent is a corporation organized under the laws of the State of Arkansas and domiciled at Dardanelle, Yell County, Arkansas, (R. 1; 72) which is in the Western Division of the Eastern District of Arkansas. The amount involved is more than $3,000, exclusive of interest and costs (R. 1; 73). This suit was filed in the United States District Court for the Western Division of the Eastern District of Arkansas.

Jurisdiction of the Federal District Court was invoked as involving Federal questions: First, that the action of the directors of the respondent in refusing to pay said bond maturities and interest coupons because the electors of the district had not voted a "Building Tax" would be a diversion of funds voted for a "General Tax" contrary to Amendment No. 11 to the Constitution of the State of Arkansas, petitioner contending that if such construction, if allowed, would result in total repudiation in violation of Section 10, Article I, of the Constitution of the United States (R. 4: 29; 84). Second, if the court should refuse to compel the payment of bonds and interest as prayed, such refusal would be a denial of rights under Section 1 of the 14th Amendment to the Constitution of the United States (R. 84).

The statutory provisions believed to sustain the jurisdiction of this court is Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. (28 USCA, Sec. 347a.)

The date of the judgment of the Circuit Court of Appeals to be reviewed is June 30, 1941. A stay of mandate was ordered by the Circuit Court of Appeals on July 14, 1941 (R. 183-4). The record, petition for writ of certiorari and briefs are being filed before the expiration of the period allowed by the stay of mandate.

III

QUESTIONS PRESENTED

1. The bonds being issued under Act 248 of 1905, as amended by Act 25 of 1913 and Act 160 of 1917, the principal question is whether the later acts of the Legislature, including Act 169 of 1931 and the Acts of 1932 and 1933 of the Extraordinary Session of the General Assembly of Arkansas as construed by the Supreme Court of Arkansas impair the obligation of the contract between the bondowners and the school district.

2. Whether the school directors at the time of the issuance of these bonds had power and authority to pledge, in addition to the mortgage on the lands and buildings, all revenues and resources of the district for the repayment of the borrowed money.

3. Whether under the laws of Arkansas and the facts in this case, power can be given under the Constitution and laws of Arkansas to the voters of the district to repudiate its debts.

4. Whether, even if directors under the law in existence at the time of the issuance of the bonds were without power to pledge the income and resources for repayment, the agreement to repay embodied in the bond itself is im-

paired by the Acts above referred to in No. I as construed by the Supreme Court.

IV

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

The reasons relied on for the allowance of the Writ of Certiorari are:

(1) The Circuit Court of Appeals of the Eighth Circuit has decided a question of local law contrary to and in conflict with the local decisions and the law of the State at the time of the issuance of the bonds.

(2) Under the Constitution and laws of the State of Arkansas in existence at the time of the issuance and sale of these bonds, the board of directors of special school districts in Arkansas had full and complete power to pledge the revenues of the district and to provide a building fund, and to make a contract embodied in the bonds pledging the resources as security for the repayment of the borrowed money, the decision of the Circuit Court of Appeals being to the contrary.

(3) The Circuit Court of Appeals has decided a question of general law in a way untenable to and in conflict with the great weight of authority.

(4) The Circuit Court of Appeals has decided a question of general law on the subject of the power of the directors of school districts in Arkansas to secure the repayment of borrowed money in conflict with the decisions of this Court.

(5) The Circuit Court of Appeals has decided a question of federal law which has not, but should be, settled by this Court.

(6) The Circuit Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this Court. (Rule 38, Section 5 (b).)

(7) The question decided by the Circuit Court of Appeals is one of wide public interest, and especially so in this: The said decision of said Court of Appeals of the Eighth Circuit actually and in effect absolutely destroys the credit of every special school district in the State of Arkansas that has issued bonds under the law existing prior to the statutes of March 25, 1931 (Act 169 of 1931) and Act 28 of the Extraordinary Session of the General Assembly of Arkansas of September 2, 1933, and is of further public interest for the reason that said decision makes it impossible for any school district, if it loses its school buildings and lands, to acquire any other school buildings and lands, and thereby makes it impossible for said school district to have schools as there can be no schools without buildings. (Rule 38, Section 5.)

The cases relied on are hereafter referred to in our brief.

V

PRAYER

WHEREFORE, petitioners respectfully pray that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding said court to certify and send to this court a full and complete transcript of the record

and proceedings of said court in the case of George E. Morton, Trustee, *et al.*, appellants, vs. Dardanelle Special School District No. 15 of Yell County, Arkansas, *et al.*, appellees, which is case No. 11,793 on its civil docket, to the end that this cause may be reviewed and determined by this court as provided by the statutes of the United States, and that the judgment of the United States Circuit Court of Appeals for the Eighth Circuit may be reversed, and that such further relief may be awarded as to this court may seem proper; and that said Act 169 of 1931 and Act 28 of 1933, as construed by the Supreme Court of Arkansas, impair the obligation of the contract between the bondowners and the school district, and that this cause be remanded with directions to the lower court to grant the relief to petitioners for which they pray, and that the defendants, including the directors and the district, and the successors in office of the directors, be enjoined from paying out any of the proceeds of the eighteen-mill tax until the payment of the bonds has been satisfactorily arranged for.

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B.

BRIEF IN SUPPORT OF PETITION

I

THE DISTRICT COURT ERRED IN DENYING RELIEF, BECAUSE ALL INCOME AND REVENUES OF THE DISTRICT HAD BEEN IRREVOCABLY PLEDGED FOR PAYMENT OF ITS BONDS (R. 17-18).

AUTHORITIES

American Exchange Trust Co. v. *Truman Spec. School Dist.*, 183 Ark. 1041, 40 S. W. (2d) 770;

A. H. Andrews Co. v. *Delight Spec. School Dist.*, 95 Ark. 26, 128 S. W. 361;

Casey v. *Smith*, 185 Ark. 149, 48 S. W. (2d) 3;

Chicago Title & Trust Co. v. *Hagler Spec. School Dist.*, 178 Ark. 443, 12 S. W. (2d) 881;

Davis v. *White*, 171 Ark. 385, 284 S. W. 764;

Dissenting Opinion: *Pledger* v. *Cutrell*, 189 Ark. 562, 75 S. W. (2d) 76;

Pertuis v. *Williams*, 137 Ark. 425, 208 S. W. 789;

Schmutz v. *Special School Dist. of the City of Little Rock*, 78 Ark. 118, 95 S. W. 438;

School Dist. of Hartford v. *West Hartford School Dist.*, 102 Ark. 261, 143 S. W. 895;

Special School Dist. of Malvern v. *Speer*, (C.C.A. 8) 75 Fed. (2d) 420;

United States v. *Babbitt*, 66 U. S. 55, 17 L. E. 94;

United States v. *City of New Orleans*, 98 U. S. 381, 25 L. E. 225;

Zartman, Trustee, v. *State ex rel., Champ, et al.*, 109 Ind. 360, 10 N. E. 94;

Act 248 of 1905 as amended by Act 160 of 1917 (Secs. 8977, 8978 and 9010, Crawford & Moses' Digest of Statutes of Arkansas, 1921);

Act 25 of 1913 (Acts 1913, p. 115) amending Act 248 of 1905;

Act 180 of 1917 (Sec. 8984, Crawford & Moses' Digest, 1921);

Act 63 of 1927 (Acts of Arkansas, 1927, p. 177);

II

FEDERAL COURTS FOLLOW LAWS AND DECISIONS EXISTING AT THE TIME OF THE ISSUANCE OF BONDS INSTEAD OF LATER ONES WHERE APPLICATION OF THE LATTER WOULD IMPAIR THE OBLIGATION OF THE CONTRACT WHERE THE QUESTION OF THE CONSTITUTIONALITY THEREOF HAS BEEN APTLY RAISED.

AUTHORITIES

Anderson v. *Santa Anna*, 116 U. S. 356, 6 S. Ct. 413, 29 L. E. 633;

Board of Liquidation v. *McComb*, 92 U. S. (2 Otto) 531, 23 L. E. 623;

Carroll County v. *Smith*, 111 U. S. 556, 4 S. Ct. 539, 28 L. E. 517;

City of Shidler v. *Speer & Sons Co.*, (C.C.A. 10) 62 Fed. (2d) 544;

County of Ralls v. *Douglass*, 105 U. S. 728, 26 L. Ed. 1220;

Davis v. *Weschsler*, 263 U. S. 22, 68 L. E. 143;

Douglass v. *County of Pike*, 101 U. S. 677, 25 L. Ed. 968;

Greene County v. *Conness*, 109 U. S. 104, 3 S. Ct. 69, 27 L. E. 872;

Loeb v. *Trustees of Columbia Twp.*, 179 U. S. 472, 21 S. Ct. 174, 45 L. E. 280;

Los Angeles v. *Los Angeles City Water Co.*, 177 U. S. 558, 20 S. Ct. 736, 44 L. E. 886;

Louisiana v. *Pilsbury*, 105 U. S. 278, 26 L. E. 1090;

Moore, et al., v. *Gas Securities Co.*, (C.C.A. 8) 278 Fed. 111;

Moore v. *Otis, et al.*, (C.C.A. 8) 275 F. 747;

Scotland County v. *United States*, 140 U. S. 41; 35 L. E. 351;

Wolff v. *New Orleans*, 103 U. S. 358, 26 L. E. 395;

U. S. Revised Statutes, Sec. 721.

III

THE COURT ERRED IN REFUSING TO HOLD THAT SECTIONS 65 AND 66 OF ACT 169 OF 1931 AS CONSTRUED BY THE SUPREME COURT OF ARKANSAS VOID AS APPLIED TO THIS ACTION AND CONTRARY TO SECTION 10, ARTICLE I AND SECTION 1 OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Authorities

Bronson v. *Kinzie*, 42 U. S. 311, 11 L. E. 143;

City of Winterhaven v. *Gillespie*, 84 Fed. (2d) 285;

Hubbel v. *Leonard*, 6 F. Supp. 145 (Ark.), (3 Judge Court);

Louisiana v. *New Orleans*, 102 U. S. 203, 26 L. E. 132;

Mobile v. *Watson*, 116 U. S. 289, 6 S. Ct. 398, 29 L. E. 620;

Mt. Pleasant v. *Beckwith*, 100 U. S. 514, 25 L. E. 699;

Shapleigh v. *San Angelo*, 167 U. S. 648, 17 S. Ct. 957, 42 L. E. 310;

Von Hoffman v. *Quincy,* 4 Wall. 535, 18 L. E. 403;

Wood v. *Lovett,* U. S., decided May 26, 1941, 85 L. E. 917;

W. B. Worthen Co. ex rel. v. *Kavanaugh,* 55 S. Ct. 555, 295 U. S. 56, (Ark.), 79 L. E. 1298;

W. B. Worthen Co. v. *Thomas,* 292 U. S. 426, 54 S. Ct. 816, (Ark.), 78 L. E. 1344.

C

ARGUMENT

Lest the court should get the impression the petitioners are seeking to press too heavily on the respondent district, we desire to point out that the record shows that respondent is now in default in the payment of bonds exceeding $72,000 and about $35,000 in interest. The bonds are in default for more than eight years (R. 73-4-5). The District Court found as a fact (R. 162) that the amount now received annually by petitioners under its modified order is insufficient to keep even the interest current. Ample provisions exist under the Statutes of Arkansas for refunding school bonds. (See Sec. 1 of Act 248 of 1905, also, 72, etc., of Act 169 of 1931; Secs. 11505, etc., Pope's Digest of Statutes of Arkansas.) The petitioners waited for three years after the district began defaulting before taking any action. The record shows that ample opportunity was given respondent by the District Court in its preliminary orders (R. 22, Jan., 1935; R. 47, July, 1935; R. 79, June, 1938) to refund. It is further shown (R. 116 and 130) that petitioners themselves extended respondent an opportunity to refund its bonds for 20 years. These offers were rejected (R. 139-40). We appreciate the fact that these opportunities and offers are not material to the constitutional questions now to be presented, but it does show petitioners were lenient and tried to co-operate in a solution of respondent's financial difficulties. It was not until all other avenues were closed that they sought additional relief. As we said before, after a lapse of eight years.

The final decision of the District Court affirmed by the Circuit Court of Appeals is in direct conflict with an earlier

decision in the same court—a case involving the identical question which was affirmed by the Circuit Court of Appeals. See *Spec. School Dist. of Malvern* v. *Speer,* (C.C.A. 8) 75 Fed. (2d) 420. The District Court's decision is also in direct conflict with another case in the same court, a three-judge court convened in the case of *Hubble* v. *Leonard,* 6 Fed. Supp. 145, from which there was no appeal. There Judge Gardner, Circuit Judge rendering the opinion of the Court, said:

> "Accepting the construction of the Arkansas Supreme Court as to the validity of this legislation, we may properly assume that the bonds issued pursuant to these acts constitute valid obligations of the state. These acts of the Legislature authorizing the issuance of the bonds and contracting for their payment, became a part of the state's contract, and in effect these provisions are embodied in the bonds themselves, leaving no doubt of the intention of the parties that the legislation should be read into the contract. *United States ex rel. Von Hoffman* v. *Quincy,* 4 Wall. 535, 18 L. Ed. 403; *Board of Liquidation* v. *McComb,* 92 U. S. (2 Otto) 531, 23 L. Ed. 623; *Louisiana* v. *Pilsbury,* 105 U. S. 278, 26 L. Ed. 1090; *Wolff* v. *New Orleans,* 103 U. S. 358, 26 L. Ed. 395; *Moore* v. *Otis,* (C.C.A. 8), 275 F. 747, 751; *Moore* v. *Gas Securities Co.,* (C.C.A. 8), 278 F. 111."

There was no appeal from this decision. The Governor of Arkansas and the Legislature which he called in Special Session made honorable provision for the liquidation of its 84 millions of highway bonds.

During the depression there were two other cases originating in Arkansas to reach this court involving practically the same question now presented. See:

> *W. B. Worthen Co. ex rel.* v. *Kavanaugh,* 55 S. Ct. 555, 295 U. S. 56, (Ark.), 79 L. E. 1298;

W. B. Worthen Co. v. *Thomas*, 292 U. S. 426, 54 S. Ct. 816, (Ark.), 78 L. E. 1344.

This petition could possibly be brought to a close here and it may be the court will see fit to grant same on the case as now presented, but caution and anxiety move us to give the court the benefit of our search of the laws of the State and decisions of the Supreme Court of the State involved herein, which we will do as briefly as possible.

THE BOARD OF DIRECTORS OF THE RESPONDENT SCHOOL DISTRICT HAD THE POWER AND FULL AUTHORITY TO ENTER INTO THE CONTRACT EMBODIED IN THE BONDS PLEDGING ALL RESOURCES OF THE DISTRICT TO PAY THE BONDS

Prior to 1869 there were no classes under Arkansas law of school districts. The Legislature of Arkansas of 1869, by Act 13, authorized the creation of what are known as special or single school districts. We have set that Act out in the appendix to this brief. That Act is entitled: "An Act for the Better Regulation of Public Schools in Cities and Towns." (See Acts 1869, pages 20-28.) The respondent district was organized under that Act in 1879 (see *Cole, as Sheriff*, v. *Blackwell*, 38 Ark. 271).

The first Act authorizing the issuance of bonds by school districts was Act 50 of 1873, page 109. This Act authorized the issuance of bonds under certain conditions by special school districts, but did not authorize common school districts to issue bonds. For the convenience of the court, we have set out that Act in full in the appendix. Under that Act, a board of directors of a special school district is given power to issue bonds, but there is a pro-

vision in the Act which prevents the issuance of bonds by the board of directors "unless a majority of the legal voters in such school district shall vote in favor of such issue." Section 3 of said Act embodies the public policy of the State at that time as to the repayment of borrowed money. It is evident from said Act that the State Legislature regarded the obligation to repay the borrowed money as a high obligation. Said Section 3 has this language:

> ". . . and each year thereafter the County Court shall, at the time of levying county taxes, levy a rate on the taxable property of such school district, in addition to the amounts levied for ordinary school purposes, to raise an amount of money sufficient to pay such amounts as may become due and payable on such bonds during the succeeding year, and the tax so levied shall be collected by the collector and paid over to the county treasurer, to the credit of such school district, in United States currency, and the county treasurer shall keep such fund separate from all other funds in his hands, and shall only pay the same on the order of the board of school directors, drawn for the purpose of paying such bonded indebtedness of such school district; and the board of school directors of such school district shall not draw any order on the treasurer, payable out of such fund, for any other purpose, until all of said bonded indebtedness shall have been paid and canceled."

The Constitution of 1874 by specific language continued in force all valid laws in existence at the time of the adoption of the Constitution unless in conflict and until repealed or modified. See schedule to said Constitution. Pope's Digest of the Statutes of Arkansas, page 163.

We refer to said Act 50 and said Constitution for the purpose of showing the policy of the State in its very first act authorizing school districts to borrow money. We

submit that said Act is expressive of the policy of the State and the obligation of school districts to repay borrowed money. We have found nothing in the Constitution of 1874, or in any Act passed since 1873, repealing the above Act 50 of 1873 except as herein stated.

Act 248 of 1905, which we have printed in the appendix, *did* modify said Act 50 of 1873 by omitting the requirement that no bonds should be issued unless the electors by a majority vote approved the same.

The Legislature of Arkansas by Act 85 of 1903 authorized special school districts to borrow money, but required a vote of the electors before the bonds could be issued. Said Act 248 of 1905 gave power to the directors of the district to issue bonds but *did not* require any approval of the electors of the district. It will thus be observed that the Legislature of Arkansas repealed the previous act requiring a vote of the electors. It did not repeal Sec. 3 of Act 50 of 1873 *ante.*

Section 1 of Act 248 of 1905 was amended by Act 25 of 1913, and Section 2 was amended by Act 160 of 1917. The original Act (No. 248) as amended, and Act 180 of 1917, appear in Crawford & Moses' Digest of the Statutes of Arkansas (1921) as Sections 8977, 8978, 8984 and 9010, which were repealed by Act 169 of 1931, subsequent to issuance of these bonds.

Act 25 of 1913, page 115, amends Section 1 of Act 248, and the language of the amendment is as follows:

> "All special free school districts in the State of Arkansas are hereby authorized and empowered for the purpose of raising funds for the erection and equipment of necessary school buildings, to borrow money and mortgage the real property of the district as

security therefor, under such conditions and regulations as to amount, time and manner of payment as the Board of Directors of said School District shall prescribe, and renew and extend from time to time any evidence of indebtedness or mortgage, or both, issued or made by virtue thereof."

The next amendment to Act 248 was made in 1917, and is found in the Acts of 1917 (Vol. I), page 857. That was an act to amend Sections 2 and 4 of Act 248. Section 2 of original Act 248 will be found in the appendix of this brief. Section 4 will also be found in the same place. Said Section 4 in the original act merely fixes the effective date of the act and repeals all laws in conflict therewith. The amendment to Section 2 by the Act of 1917 is as follows:

"The said evidences of indebtedness, whether warrants or promissory notes, or both, and mortgages, shall be in form in all respects as other investments of like kind are required by law to be, and shall have the same force and effect as they would if executed by natural persons, and the warrants shall have the same validity as they would if there were money in the county treasury to pay the same at the time they were drawn and may be drawn payable in the future, and need not be registered with the county treasury until the time for payment, but shall be drawn upon the building fund and paid out of it in the order of their date, as the building fund is provided and collected by the successive levy and collection, and said special school district shall be allowed in law or equity no defense merely by reason of the fact that it is a school district. *Provided,* that should any school district desire to borrow money and issue bonds or other evidence of indebtedness. The school directors of said district shall advertise for bids for the sale of bonds and other evidence of indebtedness and publish notice of the intent to borrow money. Said advertisement and notice to be published in county or city papers that have a general circulation, and shall sell all bonds

or other evidence of indebtedness to highest and best bidders, provided, that no bonds shall be sold for less than par, all bids to be published in newspapers of general circulation."

There was no other amendment to Act 248 until *after* these bonds were issued. As before stated, the Legislature by Act 169 of 1931 repealed all of these sections embodying Act 248 and its amendments.

As the bonds were issued by respondent on March 1, 1926, and January 1, 1931, and as Act 248, as amended, *was the only law in force at those times,* it becomes necessary for the court to construe same in order to determine whether the petitioners will be limited to recover for the benefit of the bondholders from the lands and buildings alone, or whether payment shall be made out of the tax revenues. The respondent contends that the only security for the bonds are the buildings and lands, and the state apportionment, while the petitioners contend that the security for the bonds is the full faith, credit and all resources of the district.

Each of the said bonds contains the following language (R. 10):

"This bond is one of a series of fifty-seven (57) bonds aggregating Fifty-five Thousand Dollars ($55,000), etc., issued for the purpose of providing funds with which to erect and equip a necessary school building in and for said school district, and for other purposes."

And also:

"That the Dardanelle School District of Yell County, Arkansas, acknowledges itself to owe and for value received promises to pay to the bearer $_____ together with interest thereon from the 1st day of

March, 1926. * * * The bond and attached interest coupon, as well as the bonds and coupons forming a part of this issue, are payable out of the proceeds of taxes heretofore or hereafter legally levied upon the real property within said Dardanelle School District, *and all income of said School District from any and all sources whatever, and the said bonds and coupons are secured by a mortgage lien and pledge on all of the property, resources and income belonging to said District, including the school buildings of said District and the grounds on which the same are located"* (R. 10-11).

"The Dardanelle School District, Yell County, Arkansas, hereby covenants that said School District is duly and legally existing as a School District, under the Constitution and Laws of the State of Arkansas; *that a building fund tax has been duly voted against the real property within said District,* for the purposes required by law; that all acts, conditions and things required to be done, precedent to and in the issuing of this bond, including the organization of said School District, and the Board of Directors, and all such things have been done by said Board, and said District, and have happened and have been performed in regular and due form as required by law. (Italics ours.)

"For the faithful performance of all the covenants, recitals and stipulations herein granted and contained; for the proper application of the proceeds of said bonds, and for the taxes heretofore or hereafter levied, and all income of said District hereafter received, and for the faithful performance in apt time and manner, of every official act required and necessary to provide for the prompt payment of the principal and interest of this bond, as the same may mature, the full faith, credit and all resources of said school district are hereby irrevocably pledged. * * *" (R. 11).

In paragraph 15, Deed of Trust, appears the following:

"The grantor has created a building fund and has directed that from the first revenues derived from

either the State of Arkansas, County of Yell, the taxes paid by the inhabitants of the district, *or from all of said sources or from any other source,* there shall be set aside and paid into the said building fund the following amounts in the following years: (R. 17)

"In the year 1926, $1,604.17, (and increasing amounts each year to 1951). For the liquidation of said bonds and interest.

"And if in any year the revenues are insufficient to equal the amount of the appropriation to the said building fund in that year, the amount of the deficit shall be set aside and paid into the said building fund in the first year following until said deficit is made good, and that said building fund is hereby appropriated for the payment of the debt secured by this deed of trust, and no portion thereof shall be used for any other purpose until said debt secured by this deed of trust has been paid in full" (R. 18).

In Section 2 of Act 248 of 1905, Acts 1905, page 651, reference is made to evidences of indebtedness, whether warrants, promissory notes or mortgages which shall be in form as other investments of the like kind, and shall have the same force and effect as if executed by natural persons. Then, referring to the time of payment appears these words: "But shall be drawn upon the *building fund* and paid out of it in the order of their date, as the *building fund* is provided and collected by the successive levy and collection, and said school district shall be allowed in law, or equity, no defense merely by reason of the fact that it is a school district."

With the law as above set forth in Act 248 of 1905, and the amendments thereto above outlined in full force and effect, the Supreme Court of Arkansas in the case of *Schmutz* v. *Special School District of Little Rock,* 78 Ark.

118, 95 S. W. 438, held that the school directors of a special school district had full power and authority to mortgage the real estate as security for the bonds, and also to pledge as security for the repayment of the money borrowed, all the revenues of the district. This decision is based upon Act 55 of 1905, page 154. Said Act 55 of 1905 and Act 248, as amended, *are identical* on the matters under discussion. While the Schmutz case was based upon a special act, yet the language of that particular special act giving power to the directors to issue bonds is exactly the same as the language in Act 248, which gives power to the directors to pledge the resources and to mortgage the property. The decision in the Schmutz case was handed down March 3, 1906. From 1906 until after the issuance of these bonds, there was no questioning of the power of the directors of special school districts in Arkansas to pledge the resources of the school district. The court in the Schmutz case on this subject used the following language:

> "Lastly it is contended that the recitals in the bond pledged the revenues of the district for their payment. The act under which the bonds were issued provides that the evidences of indebtedness issued by the district shall be 'paid out of the building fund in the order of their date, as the building fund is provided and collected by successive levies.' This in effect pledges the building fund of the district, whatever that may be, to the payment of the bonds. Besides, as the bonds are valid obligations, it was evidently the intention of the Legislature that they should be paid out of the revenues of the district, and they are therefore a charge against such revenues as any other valid debt would be."

During the period from 1906 to 1931, there were issued by Arkansas special school districts, bonds in sums exceeding twenty-three millions of dollars. (See State Comptrol-

ler's Biennial Report, Arkansas, Dec., 1932, of Bonded Debt of Schools, pp. 88-89.) Courts take judicial notice of such official reports. During that period every special school district in the State pledged the resources and income, as well as mortgaging the real property. There was nothing else to pledge, for payment has to be made out of income derived from taxes collected by the districts. Until the decision of *Horne* v. *Paragould Special School District,* 186 Ark. 1000, 57 S. W. (2d) 568, there was no question or doubt of the power of the directors of special school districts to issue bonds and to pledge the resources and income of the district. The amendments to Sections 2 and 4, above referred to, mention and describe the building fund. The language of Article XIV of the Constitution of 1874, and the language of Acts 248 and 55 above referred to, and the amendments to Act 248, are conclusive that the Legislature did give such specific power to the board of directors. If that power existed, the contracts embodied in the issuing of these bonds are valid and are entitled to the protection of Section 10 of Article I of the Constitution of the United States. (See *Gelpe* v. *Dubuque,* 1 Wall., 68 U. S. 175, L. E. 520.)

It is general law everywhere that when a school district or municipality mortgages real estate, the mortgagee is not compelled to rely upon the land mortgaged, but may enforce his rights against the revenues of the district. The language in the amendments to Act 248 in describing the fund for repayment shows that said fund is one resulting from the proceeds of taxes which have been levied and collected. There is no escape from the view that the building fund is a fund which results from the levy and collection of taxes. This contention is supported by the language

of Mr. Judson in his work on Taxation, at Section 545, as follows:

> "The fact that specific property is pledged for the payment of the bonds does not make them any the less the general obligations of the municipality, nor deprive the plaintiff of the right to a mandamus compelling the levy of a tax for their payment, since the pledge is only by way of collateral security."

It is our view that the principles governing the rights of these parties on this question have been approved by the decisions of this court. In the case of *County of Mercer* v. *Hackett*, 68 U. S. 83, 17 L. E. 548, 86 A. L. R. 1074, the court said:

> "Although we doubt not the facts stated as to the atrocious frauds which have been practiced in some counties, in issuing and obtaining these bonds, we cannot agree to overrule our own decisions and change the law to suit hard cases. The epidemic insanity of the people, the folly of county officers, the knavery of railroad 'speculators' are pleas which might have just weight in an application to restrain the issue or negotiation of these bonds, but cannot prevail to authorize their repudiation, after they have been negotiated and have come into the possession of *bona fide* holders."

A state court cannot so construe the acts of the Legislature as to impair the obligation of a contract. When a valid contract is made, as there was made in the issuance of these bonds, every elector and taxpayer in the district is bound by that contract. The State has no power under the Constitution of the United States to give authority or power to the taxpaying voters to impair the obligation of a contract. In *Shapleigh* v. *San Angelo*, 167 U. S. 648, quoting paragraph 2 of the syllabus, this court said:

> "A statute making a vote of taxpaying voters necessary to the assumption by a new municipality of a debt of its predecessor, which has been abolished, is an unconstitutional attempt to impair the obligation of the contract, if a liability existed without such vote before the statute."

It is not denied that a liability to pay this debt existed; the lower court gave judgment for the full amount of the bonds and interest. Reference is also made to the case of *Provident Life* v. *County of Mercer,* 170 U. S. 593, 43 L. E. 1156, again this court said:

> "While courts may properly see to it that proceedings for casting burdens upon a community comply with all the substantial requisites of a statute in order that no such burden may be recklessly or fraudulently imposed, yet such statutes are not of a criminal character, and proceedings are not to be so technically construed and limited as to make them a mere snare to those who are encouraged to invest in the securities of the municipality. These considerations are appropriate to this case. The proceedings on the part of the town and the railroad company were carried on in evident good faith. No one questioned their validity, no effort was made to review the action of the county judge, the bonds were issued, more than $100,000 was spent within the limits of the town in the construction of the road, and years went by during which the town paid the interest and part of the principal before any question was made as to their validity."

The specific right of a bond creditor to protect a fund pledged for the payment of the bonds by a restraining order or a mandatory injunction has been upheld, without dissension we believe, by the textwriters and the courts. 32 Corpus Juris 270, has this to say:

> "Under some circumstances, however, the holders of bonds, for the payment of which certain funds were

to be set aside, may be entitled to an injunction against the misapplication of such funds on the ground that he is entitled to the specific enforcement of the agreement with him."

Again adverting to the construction of the act in question, we believe *had* the Legislature intended the revenues of the district should be used solely for current operating expenses, or if it *had* intended to prohibit their use for retiring bonds, *it would have written such limitation in the act;* then there would have been no market for the bonds. The omission of any such provision evinces an intention that the directors were to be given discretion in managing the financial affairs the same as directors of any other corporation. The directors were given the power and the electors were not.

To substantiate this line of argument, we quote from the case of *United States* v. *City of New Orleans,* 98 U. S. 381, 25 L. E. 225:

"* * * A municipality without the power of taxation would be a body without life, incapable of acting and serving no useful purpose.

"For the same reason, when authority to borrow money or incur an obligation in order to execute a public work is conferred upon a municipal corporation, the power to levy a tax for its payment or the discharge of the obligation accompanies it; and this, too, without any special mention that such power is granted. This arises from the fact that such corporations seldom possess—so seldom, indeed, as to be exceptional—any means to discharge their pecuniary obligations except by taxation. 'It is, therefore, to be inferred,' as observed by this court in *Loan Asso.* v. *Topeka,* 20 Wall. 660 (87 U. S. XXII 460), 'that when the Legislature of a State authorizes a county or city to contract a debt by bond, it intends to authorize it to

levy such taxes as are necessary to pay the debt, unless there is in the Act itself or in some general statute, a limitation upon the power of taxation which repels such an inference.'

"* * * Thus, in *Lowell* v. *Boston,* 111 Mass. 460, the Supreme Court of Massachusetts, in speaking of bonds which the Legislature had authorized the City of Boston to issue, in order to raise funds to be loaned to individuals to aid them in rebuilding that portion of the city which was burned in the great fire of November, 1872, said: 'The issue of bonds by the city, whatever provision may be made for their redemption, involves the possible and not improbable consequence of the necessity to provide for their payment by the city. The right to incur the obligation implies the right to raise money by taxation for payment of the bonds; or, what is equivalent, the right to levy a tax for the purposes for which the fund is to be raised by means of the bonds so authorized.' To the same purport is the language of the Supreme Court of Wisconsin, in *Hasbrouck* v. *Milwaukee,* 25 Wis. 122. And in the recent case of *Ex parte Parsons,* in the United States Circuit Court, the Chief Justice gave emphatic affirmation to the doctrine. 1 Hughes 282. Indeed, it is always to be assumed, in the absence of clear restrictive provisions, that when the Legislature grants to a city the power to create a debt, it intends that the city shall pay it, and that the payment shall not be left to its caprice or pleasure. When, therefore, a power to contract a debt is conferred, it must be held that a corresponding power of providing for its payment is also conferred. The latter is implied in the grant of the former, and such implication cannot be overcome except by express words excluding it."

This court in the recent case of *Wood* v. *Lovett,* decided May 26, 1941, ... U. S. ....., 85 L. E. 917, discussed the question of clarification of contracts. This court in that case said:

"By its legislation the State said, in effect, to the prospective purchaser of lands acquired for delinquent taxes, that if he would purchase he should have the immunity. Under the settled rule of decision in this court the execution of the State's deeds to the appellants constituted the execution or consummation of a contract, the rights arising from which are protected from impairment by Article 1, Section 10, of the Constitution; and the obligation of the State arising out of such a grant is as much protected by Article 1, Section 10, as that of an agreement by an individual. *Fletcher* v. *Peck*, 6 Cranch (U. S. 87, 136, 137, 139, 3 L. Ed. 162, 177-179). The Act of 1935, taken in connection with the other statutes regulating the acquirement by the State, and the disposition by it, of lands sold for delinquent taxes, constituted in effect an offer by the State to those who might become purchasers of such lands, and the protection it afforded to the title acquired by such purchasers necessarily inured to every purchaser acting under it and constituted a contract with him.

"The federal and state courts have held, with practical unanimity, that any substantial alteration by subsequent legislation of the rights of a purchaser at tax sale, accruing to him under laws in force at the time of his purchase, is void as impairing the obligation of contract."

There has never been before this court a question of higher or greater importance than that involved in this case. If it be true, as the later decisions of the Supreme Court of Arkansas now hold, that the electors by merely voting eighteen mills without specifying the purpose thereby vote against the use of any part of the proceeds of such taxes for the purpose of paying building debts, then no building debts could ever be paid. The tobacco tax and other similar taxes mentioned in the decree are wholly insufficient. In this particular case they amount to about six

mills. There is no more reason for taking the six mills from such taxes than there is for taking the eighteen mill tax.

The decisions of this court above referred to, and numerous other decisions unnecessary to cite, establish the principle that when a state grants to a school district or other municipality the power to issue bonds, it follows, in the absence of any constitutional or statutory prohibition, that there is an implied power in the directors or other authorized officials to make provision for the repayment of the borrowed money.

If the directors in the special school districts of Arkansas failed to pledge the income and resources, there would be no sale of any such school bonds.

In this case the lower court, and on appeal the Court of Appeals, in effect declared that the only security held by the bondowners was the mortgage of real estate. It is known to all, investors as well as borrowers, that when funds are invested in lands and buildings for school purposes, such property does not have a value equity to the amount of money spent in the construction and equipping of the same. Everyone knows that the school district has only one means of acquiring funds to pay its debts, and that is taxation in one form or another. The eighteen mills in Arkansas is the chief source of obtaining funds to pay debts and to pay for the maintenance or operation of the schools. These bondowners, represented by the petitioners here, loaned in cash to the respondent district $160,000. It is alleged in the complaints of plaintiff and intervener that the property, consisting of the lands and the buildings thereon, is of little value other than for the purpose of operating schools. There is no denial of that in

this case. If the opinion of the Court of Appeals of the Eighth Circuit and the order of the District Court be not reversed, then the only security held by the bondowners is the mortgage. If the mortgage is foreclosed and the real property sold, the school children of this large and prosperous district will be deprived of schools. This will result because of these reasons: The property when offered for sale will not bring probably more than a fifth, and maybe not more than a tenth, of the $160,000 borrowed. That will leave a judgment over in favor of the bondowners against the district. That judgment, under the laws of Arkansas, is a lien upon all real property owned or acquired by the judgment debtor. The school district cannot borrow other money to build other buildings. It would have no real estate to offer as security. If it cannot pledge the resources, then it is without remedy. No bondowner would buy bonds that were without the pledge of the resources because of these facts. With a judgment against the district after the lands are sold, should the district purchase other property, said judgment would become a lien thereon. Hence the district could give no mortgage. The judgment against the district over and above the proceeds of the sale would remain a lien indefinitely.

It therefore appears to us that if the decision of the Court of Appeals of the Eighth Circuit stands, it would follow that the special school districts of Arkansas are doomed. The district cannot build other buildings because it is without means. It cannot borrow because it has no security to offer.

In the opinion of the Court of Appeals of the Eighth Circuit, which is printed in the record at pages 177-183, it is clear from what the court says therein that said court

regarded itself bound by the decision of the Circuit Court of Appeals in *Women's Catholic Order of Forresters* v. *Special School Dist. of North Little Rock*, 105 Fed. (2d) 716. With all respect to said court, we earnestly urge that the case referred to is not in point and is not binding either upon the Court of Appeals or upon this court. The primary object of the bringing of that suit was to secure for the owners of $25,000 of bonds of said school district a preference in payment from the revenues of the district, and to enjoin the officers from paying other bondowners in preference to the payment of the interest on the bonds of the appellant. In that case the Court of Appeals expressly stated that there was no question of the impairment of a contract. The Court of Appeals in that case used this language:

> "The instant case involves a construction of the statutes of Arkansas as applied to Arkansas contracts. The jurisdiction of the federal court was invoked on the ground of diversity of citizenship, and there was no allegation or claim that either of the legislative acts involved nor the Constitution of Arkansas impaired the obligation of the contract, in violation of the restraints of the Federal Constitution." (Pg. 721, Point 1.)

That language is an emphatic declaration that the questions involved in the instant case were not involved in that case. The court in that case cited the Schmutz case and other cases decided under the old law, not for the purpose of ascertaining whether there was an impairment of the contract, but for the purpose of ascertaining whether the appellant's bonds, being prior in time, had priority over the bonds of the other bondholders. The question as to whether Act 248 of 1905 and the amendments thereto,

including the one of 1917, specifically authorized the board of directors to create a repayment fund to retire bonds issued for building purposes, was not involved. Besides, it is clear that said case upon which the Court of Appeals relied is in conflict with the decisions of this court on the exact question involved, the impairment of the obligation of contracts and the power and authority of municipalities and school districts to provide for repayment of money borrowed. This court in the case of *County of Mercer* v. *Hackett*, 68 U. S. 83, and in the cases known as the New Orleans cases cited and commented on heretofore all hold that when authority is given to a board of directors to issue bonds, there exists an implied power in the said board to provide a repayment fund, even though the statute giving the authority to issue bonds in no manner expressly authorizes the repayment, and even though the statute does not expressly say that repayment may be provided for by the same authority that is to issue the bonds.

ACT 169 OF 1931 AND ACT 28 OF THE EXTRAORDINARY SESSION OF 1933, AS CONSTRUED BY THE DECISIONS OF THE SUPREME COURT OF ARKANSAS, NOT ONLY IMPAIR THE OBLIGATION OF THE CONTRACT IMPOSED IN THE BONDS AND THE PROCEEDINGS, BUT ABSOLUTELY DESTROY ALL CREDIT OF THE SPECIAL SCHOOL DISTRICTS OF THE STATE

The first case construing the above act was the case of *Horne* v. *Paragould Special School District*, 186 Ark. 1000, 57 S. W. (2d) 568. That decision was rendered in 1933 after these bonds were issued. The Court of Appeals in its opinion takes the position that the decisions of the

Supreme Court of Arkansas in the Horne case, the Pledger case, and the other cases that followed these two, are nothing but a clarification of the earlier decisions of the Supreme Court of Arkansas. We earnestly submit that that view is erroneous. It is difficult to understand how there could be merely a clarification when the latter cases are based upon a statute passed after the issuance of these bonds.

The Court of Appeals in its opinion takes the view that the decision in the Horne case was merely a reversal of a former ruling of the Supreme Court of Arkansas and hence there was no impairment of contract. This view is clearly erroneous for the reason that the Arkansas court in the Horne case was influenced by Act 169 of 1931. Besides the tax voted in the Horne case was voted under Act 169, the vote being in 1931. In addition the Pledger case which followed the Horne case is clearly based upon the statute of 1931 and also in part upon Act 28 of 1933.

No bondowner was a party to the Horne case. Apparently that was a suit sometimes called a "friendly suit." The county treasurer was a citizen and resident of Greene County as were also the school directors. Horne was not authorized by any bondowner to defend for the bondowners. It could easily be true that both plaintiff and defendant desired the same result. There was no claim made in the suit of any impairment of the contract in the bonds.

We have demonstrated in other parts of this brief that the Supreme Court of Arkansas plainly held in the Schmutz case that the board of directors *had* power to pledge the revenues. The same is true of the Trumann case. But the invariable rule in this court is that a munici-

pality authorized to issue bonds has power to provide a fund for repayment. See the case of *United States* v. *City of New Orleans*, 98 U. S. 381, 25 L. E. 225.

The innate weakness of the Horne case is that the Arkansas court without reversing the Schmutz case attempted to tell its meaning and thereby attempted to give color to the theory that the Horne case was a clarification of the Schmutz case. No state court has the power in a case involving the impairment of a contract to say what is the meaning of a prior case holding the directors *had power.*

As a matter of absolute law this court in determining whether a state court has held that the board of directors had the power is the sole judge of what the court held in the Schmutz case. We have cited cases to that effect in other parts of this brief.

The learned Arkansas court overlooks amendment No. 11. Said court in effect, without a word in the Constitution, gives the electors power to destroy the bond contract.

In effect the Arkansas court holds in these cases that the entire millage fund may be used in the maintenance of schools leaving the bondholder in this case without any of the millage fund to pay his debt. That ruling violates amendment No. 11 because said amendment requires the millage taxes to be used in payment of building debts and the construction of buildings.

CONCLUSION

The decision of the Arkansas court in the Horne case is misleading and harmful, and suggests to the electors a means of utter repudiation and therefore impairs the obligation of the bond contracts. In addition, the decision in the Horne case is based upon the assumption that the electors are not honest enough to vote taxes sufficient to pay an honest debt of the school district. We cannot assent to that assumption. We believe that where investors have spent $160,000 to build schools, without which there would be no schools, and where the schools may be operated by donations and loans from the State without using any of the eighteen mills, the electors are honest enough and right-minded enough to vote the eighteen mills to repay borrowed money. By this suggestion we do not concede that the electors after receiving and using the borrowed money and the buildings can defeat repayment.

It is plain that the Horne case opened the highway to repudiation and impairment of the bond contract to repay as well as to pledge the revenues. The Pledger case broadened the highway to repudiation, but that case was weakened by the dissenting opinion of Mr. Justice Frank Smith of the Supreme Court of Arkansas. The Court of Appeals in the Women's Catholic Order of Foresters case followed the illogical reasoning and obiter statements in the Horne case. Then again the Court of Appeals in the instant case committed the further error in following its decision in the Women's Catholic Order of Foresters case, although the latter case is in no manner controlling and does not decide the questions involved in the instant case.

We most respectfully submit that on the record, under the prior decisions of the Supreme Court of the State and the statutory laws as they existed at the time these bonds were issued, the court erred in denying the relief prayed for and that the petition should be granted.

Respectfully submitted,

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